

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
January 6, 2009**

Place: Room 206
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Grimes, Finke, Hutchison, Spain, and First Selectwoman Klein (as ex-officio member)

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

GENERAL MEETING

Discussion, deliberation, and possible decision regarding the following applications:

Chairman Conze read the following agenda item:

Proposed Amendments to the Darien Zoning Regulations Put Forth by the Darien Planning and Zoning Commission. Proposed amendments to the Darien Zoning Regulations to establish a new Section entitled "Inclusionary Zoning". This Section of the Regulations would, for certain developments, require the construction of affordable housing either on or off-site, and/or a fee in-lieu of construction. *PUBLIC HEARING CLOSED: 12/2/2008. NO DECISION DEADLINE.*

Mr. Ginsberg explained that a draft resolution had been distributed to the Commission on Friday, and various comments from Commission members had been received since then. He distributed a revised draft resolution to incorporate those comments. He explained that the modifications included revising the effective date of the new Regulations to May of 2009 so that the Commission staff could have adequate time to incorporate the Regulations into the existing Regulations, and that any property owners who were contemplating applications would have time to submit those plans prior to the effective date of the Regulation. Other changes were to make better and clearer examples, and to make it clear that the Planning and Zoning Commission would have discretion regarding whether an applicant was to build affordable housing units or to make a payment in lieu of constructing the units. It is also noted in the revised draft that the information regarding income limits is updated by the State on an annual basis, and the most current information available is to be used in the calculations at the time the application is submitted.

Mr. Spain said that the purposes and objectives of the Regulations are also clearer. Mr. Finke said that adopting the Regulations will help to prevent the Town from backsliding, that is falling farther behind the goal of having 10% of the dwelling units be affordable. The proposed Regulation gives the Planning and Zoning Commission the authority to provide incentives to allow for affordable housing to be created, and this is what is contemplated by the State Statutes.

Mr. Spain said that at present, approximately 2.6% of Darien's housing stock is affordable, and therefore the Town is subject to applications made under Section 8-30g of the Connecticut General Statutes. The Town can only be exempt from such applications if 10% or more of the housing stock

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 2

is affordable, or if a moratorium is achieved. The moratorium would only provide protection on a temporary basis. He noted that many small developments will not be subject to this new requirement for affordable housing units, and therefore there might be some minor backsliding, but larger developments would be subject to the new Regulation. He noted that some of the affordable housing units that will be created will comply with the provisions of Section 8-30g and count toward the 10% criteria. Other affordable housing units will utilize regional income standards, and would therefore not comply with Section 8-30g. Mr. Spain also noted that the Regulation being adopted may need to be modified in the future, depending on the experiences of the Commission.

Mr. Hutchison said that he very much liked the “priority population provision” within the Regulation, but he expressed concern about the possible unintended consequences of having a greater number of lots or dwelling units being created. Mr. Conze said that it is important to make sure that any development that is approved under this Regulation be consistent with the surrounding neighborhood. He suggested reiterating that language in Section 585 of the Proposed Regulation.

Mr. Ginsberg noted that there are not many large parcels of land left that would be subject to this new Regulation and the new requirements to provide affordable housing. Mr. Spain said that the minimum size development or minimum number of units in a development is a threshold that does provide a “loophole” that allows some properties not to be impacted by the Regulation. He said that the Regulation might also influence people to preserve existing parcels as is.

Mrs. Klein said that affordable housing being developed today and in the future, does and will look very different from what was built as affordable housing in the past. Mrs. Grimes said that the incentives within the proposed Regulation are more of a carrot that can be offered to developers rather than being an all-encompassing requirement. Mrs. Klein noted that it is important that the Regulation does have a provision for “work force housing” that is reflective of the median income of the region as well as affordable housing that complies with the criteria of Section 8-30g of the State Statutes.

In response to a question, Mr. Ginsberg said that Town Counsel has been involved throughout this process, and has reviewed the Proposed Regulation.

The following motion was made: That the Planning and Zoning Commission incorporate Mr. Conze’s suggested added language in Section 585 of the Regulation and adopt the revised Resolution subject to the modification as noted above. The motion was made by Mr. Finke and seconded by Mrs. Grimes. Voting in favor of the motion were Messrs. Spain, Conze, Finke and Mrs. Grimes. Mr. Hutchison voted against the motion. The motion passed by a vote of 4-1. The Resolution was adopted, and the Regulation will become effective at noon on May 31, 2009. The resolution approving the amendments to the regulations read as follows:

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009

Application Number: Proposed Amendments to the Darien Zoning Regulations

Application Put Forth by the Darien Planning and Zoning Commission

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 3

Activity Being Applied For: Proposed amendments to the Darien Zoning Regulations to establish a new Section entitled "Inclusionary Zoning". This Section of the Regulations would, for certain developments, require the construction of affordable housing either on or off-site, and/or a fee in-lieu of construction.

Date of Public Hearing: June 3, 2008 continued to December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: May 22 & 29, 2008

November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: AMENDMENT TO THE ZONING REGULATIONS ADOPTED, WITH AN
EFFECTIVE DATE OF SUNDAY, MAY 31, 2009 AT TWELVE NOON.

Scheduled Date of Publication of Action:

January 15, 2009

Newspaper: Darien News-Review

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The Commission proposes to amend the Darien Zoning Regulations by adopting inclusionary zoning as specifically authorized by Section 8-2i of the Connecticut General Statutes.
2. A prior application for inclusionary housing put forth by the Commission had a public hearing in December 2007, was withdrawn on February 5, 2008. The subject application was presented and discussed at a public hearing on June 3 and that hearing was continued to December 2.
3. This Zoning Regulation amendment proposal was referred to adjacent municipalities, the Southwestern Regional Planning Agency (SWRPA), and the State of Connecticut Department of Environmental Protection (DEP). SWRPA sent comments dated April 30, 2008, recommending approval of the application. In an e-mail dated May 16, 2008, the DEP had no comments on the application.
4. The Darien Board of Selectmen sent comments dated 3 June 2008, noting that they voted 3-1-1 in support of the proposed Inclusionary Zoning Regulations put forth by the Planning and Zoning Commission.
5. At the public hearing, it was noted that the threshold is for the regulation to apply to projects which create additional multi-family dwelling units (with units under Section 405e. being exempt), and subdivisions or re-subdivisions of five or more buildings lots. In recent years, there have only been eight of those subdivisions of five or more building lots.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 4

6. One important feature of the proposal is that the Planning & Zoning Commission has the sole discretion to determine whether the unit(s) will be built on-site, off-site, whether a fee in-lieu will be paid, or some combination thereof. It was suggested during the public hearing by Mr. Finke, a Commission member, that in various locations where the proposed Regulations indicate that the Commission may approve or may not approve, he suggested that the Commission might add language after each “may” to include “at the absolute discretion of the Commission”. He also suggested adding language “and still maintains the architectural elements and character of the neighborhood.” These changes were included in this resolution within Sections 585, 588a, 588d, 588e, and 588f.
7. The Inclusionary Zoning Regulation refers to Section 8-30g-8 of the Regulations of Connecticut State Agencies. These are not the Connecticut General Statutes, but rather, regulations implemented by the Department of Economic and Community Development (DECD). It is acknowledged that these regulations may change and/or be amended from time to time. It is the intent of these Zoning Regulations to be fully consistent with an amended Regulations of Connecticut State Agencies adopted by DECD within Section 8-30-g-8.
8. The Commission notes that Section 588e. specifically refers to the Area Median Family Income. As of February 2008, that amount for Darien is \$117,800. This is an amount which will vary, and the U.S. Department of Housing and Urban Development (HUD) is expected to update this number annually. The Commission notes that as new numbers are published, those updated numbers shall be used for the calculations in Section 588e. The numbers contained within the Zoning Regulation has been included as an example. Current, more updated information shall be used by applicants, when and where available. A note has been added to Section 588e reflecting this requirement.
9. The effective date of these Regulations is May 31, 2009. Section 8-2h of the Connecticut General Statutes addresses the issue of zoning applications filed prior to a change in the Zoning Regulations, and notes that an application filed with the planning and zoning commission shall not be required to comply with any change in the zoning regulations taking effect after the filing of such application.
10. The Commission hereby finds that the proposed Amendment of the Darien Zoning Regulations is fully consistent with the 2006 Town Plan of Conservation & Development, as amended.

NOW THEREFORE BE IT RESOLVED that ***Proposed Amendment to the Darien Zoning Regulations*** is hereby ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, MAY 31, 2009 AT TWELVE NOON, as revised herein:

The approved wording is as follows:

New wording in bold, deletions in strikethrough:

SECTION 580. INCLUSIONARY ZONING

581. Background and Purposes

These regulations are intended to encourage the development of below market rate dwelling units within the Town of Darien, consistent with Section 8-2(i) of the General Statutes of Connecticut.

582. Applicability

Inclusionary Zoning Regulations shall apply to all zones that allow dwelling units as a principal or special permit use.

583. Below Market Rate Requirements

Developments resulting in the creation of additional multi-family dwelling units shall designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate. For the purpose of this regulation, the term multi-family is defined as a single property with two or more dwelling units, whether attached or detached. Dwelling units constructed pursuant to Section 405e. are exempt from the requirements of this regulation.

Single-family subdivisions or re-subdivisions resulting in a total of five or more building lots shall designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate. All other single family subdivisions are exempt from the requirements of this regulation.

The below market rate requirement shall be satisfied by: providing below market rate dwelling units on the subject property; providing below market rate dwelling units elsewhere within the Town of Darien; or paying a fee in lieu; or providing some combination thereof.

At least half of the below market rate (BMR) dwelling units shall be affordable to households with an income equal to or less than 80 percent of the State Median Income for the State of Connecticut and the remainder of the below market rate dwelling units shall be affordable to households with an income equal to or less than 110 percent of the Area Median Income for the Standard Metropolitan Statistical Area encompassing Darien. If an odd number of below market rate units is being constructed, the higher number of units shall be constructed at the 80 percent number. For example, if the requirement is to construct one BMR unit, then it shall be at the 80 percent number. Household incomes are published by the United States Census Bureau and periodically updated by the U.S. Department of Housing and Urban Development (HUD). Income levels are to be adjusted for household size per HUD requirements.

584. Below Market Rate Dwelling Unit

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 6

A below market rate (BMR) dwelling unit is defined as a dwelling unit occupied by an income-eligible household as described in the Section 583 where the maximum sales price or rent shall be restricted for forty years or the life of the unit, which ever is longer, using the methodology for maximum housing payment calculations outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies.

585. Incentives

Developments subject to the provisions of Section 580, except for single-family subdivisions, may, at the absolute discretion of the Commission, be eligible for an increase in permitted density up to 50 percent greater than the allowed density provided at least 25 percent of such incentive units are designated as below market rate and the Commission determines that such incentives do not adversely affect the health, safety and welfare of the public in general, and the immediate neighborhood. In such cases, the Commission may, at the absolute discretion of the Commission, allow any or all of the following waivers, provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood:

- a. Recreational or open space requirements may be reduced.
- b. Minimum yard requirements may be reduced.
- c. Maximum building coverage requirements may be increased.
- d. Parking requirements may be reduced.
- e. Height may be increased to allow three stories.

In no case shall the Commission approve a waiver described in a. through e. above, resulting in a requirement that deviates by more than 25% from the originating regulation.

586. Priority Population

The below market rate dwelling units shall be offered for sale or rent to income-eligible households in accordance with the following priority designations:

- a. Individuals or families who live and work in the Town of Darien who provide volunteer emergency/life saving services for residents of the Town.
- b. Individuals or families who are employed by the Town of Darien or Darien Public School system.
- c. Individuals or families who live and work in the Town of Darien.
- d. Individuals or families who live in the Town of Darien.
- e. Individuals or families who work in the Town of Darien.
- f. Individuals or families who previously lived for a minimum of one (1) year in the Town and wish to return.
- g. All other individuals or families.

587. Program Administration

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 7

Prior to the issuance of any Certificate of Occupancy, any application under Section 580 shall identify the non-profit entity or property manager who will be responsible for program administration. The program administrator is subject to the approval of the Commission or its designated representative. The program administrator shall:

- a. Annually review and certify to the Commission the annual income of households residing in below market rate dwelling units in accordance with a procedure established in advance and approved by the Commission.**
- b. Maintain a list of eligible households in each category, as described in Section 586, who have applied for participation in the program. Applicants within each category shall be selected by lottery, conducted in accordance with a procedure established in advance of said lottery and approved by the Commission, or its designated representative.**
- c. Annually certify to the Commission that the selected household actually resides in the below market rate dwelling unit.**
- d. Certify to the Commission that below market rate dwelling units sold or re-sold do not exceed the maximum purchase price as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.**
- e. Certify to the Commission that below market rate dwelling units for rent shall not exceed the maximum monthly rent as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.**

588. Additional Standards

- a. On-Site: Below market rate dwelling units shall be reasonably dispersed throughout the development and shall contain, on average, the same number of bedrooms and shall be indistinguishable from market rate units with respect to the exterior finishes, including landscaping, but interiors may include standard finishes and need not be of 'luxury' quality. Those units shall be designed and located to maintain the architectural elements and character of the neighborhood.**

(1) Example: Nine lot subdivision:

The total number of on-site units proposed is nine (9).

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 1.08 = .54$.

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 1.08 = .54$.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 8

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% level, and no unit is needed for the 110% level. The remaining .08 units would have to be fulfilled via fee in lieu at the 110% level standard

$$0.08 \times \$117,800 \times 225\% = \$21,204.$$

(2) Example: Nine multi-family units to be constructed:

The total number of on-site units proposed is nine (9).

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 1.08 = .54$.

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 1.08 = .54$.

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% level, and no unit is needed for the 110% level.

The Commission could grant up to 4 additional units as a bonus (1/2 of 9 rounded down), provided that these units meet a 25% affordability standard (Section 585).

Now there are 13 units

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

25% of the 4 bonus units will need to be affordable = 1.00.

Now, there are two required affordable units, one at the 80% level, and one at the 110% level, with the remainder being a fee-in-lieu calculated as:

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times .08 = .04$

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times .08 = .04$

The Area Median Income for a family of four is \$117,800 (2008).

The cash contribution is calculated as follows:

$$0.04 \times \$117,800 \times 300\% = \$14,136$$

$$0.04 \times \$117,800 \times 225\% = \$10,602$$

The total fee in lieu payment is: \$24,738

- b. **Phasing:** Below market rate dwelling units shall be developed simultaneously with or prior to the development of the other units on a pro rata basis.
- c. **Deed Restrictions:** In order to maintain below market rate dwelling units for forty years or the life of the unit, whichever is longer, the following restrictions shall apply:
 - (1) Below market rate dwelling units for sale shall be restricted by title to require that, in the event of any resale by the owner or any successor, the resale price shall not exceed the then maximum sales price for said dwelling unit, as determined in accordance with Subsection 587d above or the sum of the original purchase price and the cost of any documented fixed improvements made by the owner, whichever is greater.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 9

- (2) Below market rate dwelling units for rent shall be restricted by title to require that the rents for said units shall not exceed the maximum rent as determined annually in accordance with Subsection 587e above.
- d. **Alternative Sites:** The Commission may, at its absolute discretion, approve the construction or rehabilitation of the required below market rate dwelling units on another site in Darien, provided that such off-site below market dwelling units shall be maintained for forty years or the life of the unit, whichever is longer, in the same manner as on-site units. The Commission may condition the issuance of certificates of occupancy for the development project with the completion of the off-site below market rate dwelling units or establish other reasonable performance conditions necessary to insure that the off-site units will be built in a timely manner.
- e. **Payment of a Fee:** The Commission, at its absolute discretion, may require the applicant to pay a fee in lieu of constructing some, or all, of the required below market rate housing units. Such fee shall take the form of a one time cash contribution to a Town of Darien housing trust fund, or other Commission approved non-profit or for-profit organization dedicated to below market rate housing initiatives. Said funds shall be paid prior to the issuance of the first Zoning Permit. Units created with such funds shall be designated as below market rate in the same manner as required in Section 584. The cash contribution provided for each dwelling unit, or fraction thereof, shall be as follows:
- (1) Units affordable to households earning 80 percent of the State Median Income for the State of Connecticut require a cash contribution equal to 300% of the Area Median Income for a family of four.
- (2) Units affordable to households earning 110 percent of the Area Median Income for the Standard Metropolitan Statistical Area encompassing Darien require a cash contribution equal to 225% of the Area Median Income for a family of four.
- (3) **Example: cash contribution based on 2008 data:**
The total number of on-site units proposed is five (5).
The number of BMR dwelling units required: $5 \times 12\% = 0.6$.
The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 0.6 = 0.3$.
The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 0.6 = 0.3$.
The Area Median Income for a family of four is \$117,800 (2008).
The cash contribution is calculated as follows:
 $0.3 \times \$117,800 \times 300\% = \$106,020$
 $0.3 \times \$117,800 \times 225\% = \$79,515$
The total fee in lieu payment is \$185,535.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 10

(Note: As of the adoption of this Regulation, the 2008 Area Median Income data was the most recent available. As time changes, this data will change. The most recent data from HUD at the time the application is filed shall be used for this calculation).

- f. **Where the contribution is targeted to assist an identified off-site project providing below market rate dwelling units, the Commission may, at its absolute discretion, condition the issuance of certificates of occupancy for the development project with the completion of the off-site below market rate dwelling units or establish other reasonable performance conditions necessary to insure that the off-site units will be built in a timely manner.**

Mrs. Klein thanked the Planning and Zoning Commission for allowing her to attend, and she departed. Mr. Conze then read the following agenda item:

Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #262, Land Filling & Regrading Application #211, Amendment to the Town Plan of Conservation & Development, Christopher & Cynthia Hamer, 26 Oak Crest. Proposing to construct 10 residential condominium units (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking, and to perform related site development activities. The applicant is requesting the establishment of a new HOD zoning district; an amendment to the zoning map rezoning the property to HOD; and corresponding changes to the Town Plan. The subject property is located on the southeast side of Oak Crest approximately 1,000 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #15 as Lot #101 and Parcels X-1 and X-2, in the R-1/2 Zone. *PUBLIC HEARING CLOSED ON 11/6/2008. DEADLINE TO DECIDE MATTER IS: 1/9/2009.*

Planning and Zoning Commission members reviewed the revised Draft Resolution that had been presented.

The following motion was made: That the Commission waive the process of reading aloud the entire Resolution because each member had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Hutchison, seconded by Mrs. Grimes and unanimously approved.

Mr. Ginsberg distributed a revised draft which incorporates comments that Commission members had suggested. He noted that the Draft Resolution is to deny all aspects of the application, including the Affordable Housing Site Plan, the Filling & Regrading Permit Application, the request to modify the Zoning Regulations, the Proposed Amendment of the Zoning Map, and the Proposed Amendments of the Town Plan of Conservation and Development. He said that the Commission can act on all of the applications as a unit, or could vote on each aspect of the proposal individually.

Mr. Hutchison noted that the drainage requirements of the site are very important, and there is considerable concern about the impact that the proposed development could or would have on the adjacent watercourse and downstream property owners. Mr. Ginsberg noted that the revisions incorporated into the Draft Resolution include a number of typographical corrections and clarifications. The allegations by the neighbors about the motives and ability of the applicant to

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 11

implement the project are mentioned in the Resolution, but those are not reasons for the Commission to deny the application.

After further discussion, the following motion was made: That the Commission adopt the following Resolution to deny all aspects of the application. The motion was made by Mr. Spain and seconded by Mrs. Grimes. All members of the Commission voted in favor of the motion to adopt the Resolution, and therefore all aspects of the application were denied. The Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009**

Application Number: Proposed Amendment to the Darien Zoning Map and Zoning Regulations,
Affordable Housing Application, Site Plan Application #262,
Land Filling & Regrading Application #211,
Proposed Amendment to the Town Plan of Conservation & Development

Street Address: 26 Oak Crest
Assessor's Map #15 as Lot #101 and Parcels X-1 and X-2

Name and Address of Property Owners: Christopher & Cynthia Hamer
26 Oak Crest
Darien, CT 06820

Name and Address of Applicant: Oakview Housing Trust I, LLC
c/o David Lasnick, Esq.
970 Summer Street
Stamford, CT 06905

Name and Address of
Applicant's Representative: Matthew Ranelli
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

Activity Being Applied For: Proposing to construct 10 residential condominium units (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking, and to perform related site development activities. The applicant is requesting the establishment of a new HOD (Housing Opportunity District) zoning district; an amendment to the zoning map rezoning the property to HOD; and corresponding changes to the Town Plan of Conservation & Development.

Property Location: The subject property is located on the southeast side of Oak Crest approximately 1,000 feet east of its intersection with Mansfield Avenue.

Zone: R-1/2 Zone

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 12

Date of Public Hearing: September 9, 2008; September 30, 2008; November 6, 2008.

Time and Place of Public Hearings: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: August 28, 2008
September 5, 2008

Newspaper: Darien News-Review
Norwalk Hour

Date of Actions: January 6, 2009

Actions:

Affordable Housing Application, Site Plan Application #262, Land Filling & Regrading Application #211: to construct 10 units of housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new building with associated parking, regrading, and to perform related site development activities: DENIED.
Proposed Amendments to the Zoning Map and the Darien Zoning Regulations: DENIED
Proposed Amendment to the Town Plan of Conservation & Development: DENIED

Scheduled Date of Publication of Action:
January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

I. WITH REGARD TO AFFORDABLE HOUSING APPLICATION, SITE PLAN APPLICATION #262, LAND FILLING & REGRADING APPLICATION #211, THE PLANNING AND ZONING COMMISSION MAKES THE FOLLOWING FINDINGS:

1) THE SITE: The site is at the southeast side of Oak Crest, approximately 1,000 feet east of its intersection with Mansfield Avenue. It is the last lot at the easterly end of the street. The Improvement Location Survey submitted with the application notes that the site consists of three parts: Parcel Y which is the original building lot and consists of 32,951 square feet (.756 acres). Parcel X-1 is a 4,833 square foot (0.107 acre) parcel between the cul-de-sac area and the original building lot. Parcel X-2 is 14,068 square feet (0.3229 acres) and is reserved for a cul-de-sac turnaround at the end of Oak Crest. Note 10 on the approved Subdivision Map # 3853 filed in the

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 13

Darien Land Records provides that Parcel X2 is “to be reserved for highway use and said parcel shall be conveyed to the Town of Darien upon demand by said Town of Darien and without financial consideration.” While the gross site area is 1.185 acres, the actual site area is .86 acres because Parcel X-2 is reserved for the cul-de-sac.

2) TOPOGRAPHY OF SITE AND NET DEVELOPABLE AREA: The site slopes down from west to east. The overall slope of the site, measured from the northwest corner to the southeast corner, drops 21 feet in elevation over a distance of 350 feet. This is an average grade or slope of 6%. In the southeastern portion of the site approximately 3,000 square feet have steep grade changes ranging from 15% to 20%. The site does not slope “gently to the east from Oak Crest toward Granaston Lane” as stated by applicant. (Applicant’s submittal dated 6/9/08, p2) This 3000 square foot portion of the site is not developable and should not be included in the calculation of the net developable area. The net developable area is 37,784 square feet minus the 3000 square feet (the portion of the site with grades in excess of 15%). The net developable area would then be 34,784 square feet, (0.8 acre) which can then be used to calculate site density. This net calculation method is the long established standard which is consistently used in the Design Business Residential (“DBR”) zone. Section 505.1 provides that “Significant wetlands and areas of steep slopes of 15 percent or greater grade may be identified by the Commission and excluded from the gross land area computation.”

3) EXISTING ZONING: The property is located in a R1/2, single family residential zone that allows only one dwelling unit per half acre lot. Being oversized, this existing parcel might be divisible to allow up to 2 dwelling units on a 1.185 acre parcel, however, the existing encumbrance on the deed permits only one dwelling unit on this .86+/- acre parcel after the necessary provision of space for the cul-de-sac.

4) THE PROPOSED PROJECT: The proposal is to construct 7 two-bedroom and 3 three bedroom units, for a total of 10 residential units (including 3 units that are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes). The 10 units would be in two new buildings. Applicant characterized the project as “modestly sized condominiums on a large parcel.” (applicant’s submittal of 1/9/08, p 2) In fact, applicant has proposed condominiums with 1,600 square feet of living area, plus garage space. The proposed HOD regulations call for a much higher maximum unit living space of 2,000 square feet, excluding garage. These would be 10 large condominiums on a small and environmentally sensitive site. By way of comparison, in the DBR zone the average size condominium is 1,200 square feet. (DBR 504.5)

5) LOCAL WETLANDS AGENCY APPLICATION DENIED: The Darien Environmental Protection Commission denied applicant’s permit to conduct a regulated activity. (EPC Resolution dated November 19, 2008 regarding Application No. 35-2008). EPC denied the application for a permit based on the following findings: (1) An adverse impact on regulated area; (2) Volume and contamination of stormwater; (3) Increase in impervious surface required by cul-de-sac; (4) Inadequate stormwater pre-treatment; (5) Failure to use actual field conditions; (6) Inadequate Granaston Lane Drainage system; (7) Inadequate testing for stormwater infiltration; (8) Need for analysis of stream channel protection; (9) Need to address maintenance of stormwater treatment system; and (10) Inadequate snow storage.

6) CUL-DE-SAC REQUIRED: Article IV, Section F of the Subdivision Regulations provides that a dead-end street “shall be equipped with a turnaround roadway at the closed end having a minimum

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 14

right-of-way diameter of 130 feet,” otherwise known as a cul-de-sac. The record establishes that while the nearby street Granaston Lane is a cul-de-sac (with a large, paved circular turnaround area for vehicles), Oak Crest is a dead-end road that does not have a cul-de-sac (paved turnaround area for vehicles) as long required by Darien Subdivision Regulations. Oak Crest is not a cul-de-sac road as described in the application. (Tab 2, page 2 of applicant’s 6/9/08 submittal). The legal opinion of Assistant Town Counsel dated September 12, 2008 confirmed that under Darien’s Subdivision Regulations (Article IV, Section G) a hammerhead turnaround is only permitted on a private road, that is less than 800 feet long, and that has eight or fewer building lots. Because of safety concerns, a hammerhead turnaround is only permitted on a “Low Volume Local Residential Street.” The applicant’s proposed hammerhead turnaround is not permitted because: (1) Oak Crest is a public street; (2) the road is more than 800 feet long; and (3) already has substantially more than 8 building lots. There are 18 houses on Oak Crest, not counting the house currently standing on the applicant’s lot at the east end of the street. A hammerhead turnaround is substantially smaller than a cul-de-sac turnaround. A hammerhead turnaround has only a paved depth of 65 feet and a 45 foot radius at the inner intersection of the hammerhead and the roadway. While the applicant has proposed a “hammerhead turnaround,” which is not allowed in this situation, a larger cul-de-sac turnaround is required for proper traffic control and safety reasons.

7) ACCESS FOR FIRE DEPARTMENT AND EMS VEHICLES: It was amply demonstrated that neither the existing Oak Crest nor the proposed site plan for the Project could safely accommodate the number of fire department apparatus and EMS vehicles that would need to respond to a fire at this proposed Project. The Project has only one means of ingress and egress. A second means of access is needed at this site and has not been provided from either Granaston Lane or from an additional curb cut on Oak Crest. The Fire Marshal has determined that the proposed driveway has an inadequate turning radius for the multiple fire apparatus that would respond in any emergency at a multi-family dwelling structure. The Fire Marshal stated that “we require some type of acceptable turn around or a second means of egress/ingress to the proposed development.” The reduced building setbacks would also mean that it would be difficult for fire apparatus to be positioned within a paved driveway and still be safely far enough away from a burning building to carry on both rescue and fire suppression operations.

According to a September 26, 2008 memorandum from Darien Fire Marshal Robert Buch, apparatus responding to this site would include: 2 Darien FD Engines, a Tower Ladder; 1 Rescue Truck and anywhere from 1 to 3 Chief’s vehicles. During weekdays under mutual response protocols, the other two Town volunteer fire departments would send at least 2 more Engines. Normally 2 or more EMS vehicles and police cars would also respond to a fire alarm at a multi-family building.

As noted in a November 6, 2008 letter from the Darien Fire Marshal, he had not received any data, nor has Mr. Pelton from Aquarion Water, in regards to water pressure and flow available for fire fighting for this proposed Project.

8) ACCESS TO REAR OF HOUSING UNITS: In order to adequately protect the safety of the residents in the proposed dwelling units, the Fire Department would need sufficient access and room for ladders to reach third floor bedroom windows of all of the units. The rear and side yard setbacks are proposed to be only 10 feet wide and some of that area would be occupied by trees and other landscaping vegetation. The Commission remains concerned that there is insufficient room to

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 15

assure emergency access by fire personnel using ladders in this constricted space. (11/6/08 hearing minutes, page 22)

9) **DENSITY:** The gross site area consists of 51,852 square feet or 1.185 acres. With Parcel X2 used for the cul-de-sac, the developable area is reduced to 0.86 acres (37,784 square feet). This represents a density of 11.5 units per acre. When the steep sloped, nondevelopable area is removed from the calculation, the net developable area is 34,784 square feet, (0.8 acres) which would result in a proposed density of 12.5 units per acre with approximately 52% of the site area covered by impervious surfaces.

10) **PEDESTRIAN SAFETY:** There are 18 families with over 25 children under the age of 10 currently living on Oak Crest. There are currently no sidewalks on Oak Crest. The increased vehicular traffic resulting from the addition of nine more dwellings on the street will result in a substantial increased risk to the safety of these children.

11) **INCREASED VEHICULAR TRAFFIC ON OAK CREST:** Oak Crest was built in 1931. Unlike most other public streets, Oak Crest does not conform to Town Road Standards. Oak Crest has nineteen homes but the Darien Subdivision Regulations provide that no more than 14 homes shall be located on a dead end or cul-de-sac. The paved, travel portion of Oak Crest is only 22 feet wide and Town Road Standards require the road surface to be 26 feet wide. Since guest or visitor vehicles currently park in front of houses on Oak Crest, this further reduces the area for safe vehicular traffic. This public safety problem is then further compounded by the absence of any sidewalks on Oak Crest, which forces pedestrians to walk in the road.

As noted at the public hearing, the ten proposed multi-family units will increase vehicular traffic on Oak Crest. The traffic expert hired by the applicant noted that the proposed development would add traffic volume. The applicant's traffic expert also stated that adding more vehicles to this traffic flow does increase the risks, but he could not say exactly or specifically what amount of traffic increase would result in unsafe conditions. (11/6/08 minutes, page 21) Because the Project is located at the far end of the dead end street, all vehicles to and from the development will need to traverse the entire length of the road.

12) **INADEQUATE ON-SITE PARKING:** Existing multifamily zoning regulations adopted since 1986 have required 2.5 on site parking spaces per unit. This allows 2 spaces for the residents and one additional space for each two units for guests or visitors. In rare situations, such as when all the units are affordable housing for low income elderly persons, this requirement is reduced because these are generally one-bedroom units occupied by residents who own only one or no vehicles. This application proposes that each of the 10 units would have at least 2 and 3 bedrooms and there would be no restrictions as to the age of the residents. Over twenty years of experience has demonstrated that the prescribed 2.5 parking spaces are the minimum needed for each residential unit and particularly for 2 and 3 bedroom units.

13) **GRANASTON LANE:** Granaston Lane, the Granaston Lane Bridge and the Goodwives River are approximately 75 feet from the property corner. Granaston Lane is a cul-de-sac road and the Granaston Bridge over the Goodwives River is the only means of access for emergency vehicles to 8 Granaston Lane houses located on the west side of the Goodwives River. There was considerable information presented at the EPC and P&Z public hearings regarding the adequacy or inadequacy of

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 16

the bridge to accommodate the river in flood conditions caused by heavy rain. This Commission notes that the EPC decision required additional analysis of the applicant's drainage system, bridge capacity, and the water effect in the Granaston Lane system under actual field conditions. (EPC decision, pages 9 and 10).

14) NO OPEN SPACE IS PROVIDED: No real open space or recreational space is proposed. The minimum open space requirement in the DBR zone is 600 square feet of usable open space per unit with at least 75% of the recreation area having a grade less than 5%. (DBR 510a) The units proposed would have two and three bedrooms per unit, thus indicating that it is very likely that there would be numerous children living at the site, yet there would be no safe, outside play area. The absence of open space is made more critical given the high density proposed by the applicant and the topography of this small parcel, and its proximity to the dangers of the Goodwives River.

15) SITE IS NOT CLOSE TO DARIEN CENTER FOR PEDESTRIANS: The existing DBR multifamily zones are either adjacent to Boston Post Road (Route 1), within, contiguous to or less than .25 miles from Darien Center, and are either on or very close to a public bus route. This site is not. For example, this proposed site is 0.8 miles from the Darien Train Station and 0.7 miles from the Goodwives Shopping Center. These are actual walking distances, and not unrealistic "as the crow flies" distances provided in a misleading exhibit provided by the applicant.

NOW THEREFORE BE IT RESOLVED that the applications for Site Plan approval and Land Filling and Regrading Permit are hereby DENIED BASED ON THE ABOVE FINDINGS AND FOR THE FOLLOWING REASONS:

A. EPC DENIAL of application to conduct regulated activities within a regulated area. This Commission agrees with EPC's ten reasons for their denial. The Planning and Zoning Commission specifically takes cognizance of the fact that a single percolation test from one location was taken on the subject property. There will need to be more testing to determine if there is more shale on the subject property. The EPC requested a multi-season test to determine if the on-site soils are appropriate for the proposed design. The Planning and Zoning Commission agrees. The Planning and Zoning Commission recognizes that these EPC findings raise serious health and safety issues.

B. HAMMERHEAD TURNAROUND DOES NOT COMPLY with Planning and Zoning regulations for the terminus of a public street to be occupied by so many dwellings. A hammerhead turnaround would compromise the safety of existing Oak Crest residents as well as new residents within the proposed project. Parcel X2 was reserved to protect the residents of Oak Crest. A standard cul-de-sac turnaround (which is larger than applicant's proposed hammerhead) allows more than one vehicle to turnaround at the same time without having to backup, and is safer than a hammerhead turnaround. Adding nine more dwellings (the ten proposed new units minus the existing house on the lot that would be demolished) to the existing dead-end street, while failing to address the noncompliance with Town road standards would raise substantial public health and safety interest issues. This Commission's decision is based on what the regulations require and is not based on who will own the cul-de-sac and does not determine any private property rights. The Commission's interest is public safety. Such safety is not affected by who owns the cul-de-sac. Public safety is concerned with getting the cul-de-sac built as required by regulations for the safety

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 17

and benefit of not only residents of the proposed development but also for all residents of Oak Crest and the general public that drives on this public street.

C. INADEQUATE ACCESS FOR FIRE AND EMS VEHICLES was documented by Darien Fire Marshal. Specifically, the Fire Marshal determined that both Oak Crest and the proposed driveway for the Project are inadequate to accommodate the number of emergency vehicles that would respond in an emergency. The site plan proposes an inadequate turning radius for emergency vehicles and the minimal setbacks further impede access in an emergency. The applicant's traffic expert did not refute the Fire Marshal's conclusion. While the applicant's traffic expert demonstrated how one fire truck might be able to back up into the hammerhead, he did not address the ingress and egress of multiple emergency vehicles arriving at the site simultaneously. Nor is there any way to avoid the need of emergency responders' vehicles to move on and off the site while carrying out their duties. The limited space on the property clearly does not allow for such vehicular flow.

D. INADEQUATE ACCESS TO REAR OF HOUSING UNITS Prudent safety precautions require emergency access to the third floor bedroom windows of the proposed units. Due to the limited setback space being provided in the proposed plan, such safe access to protect the residents is not provided.

E. INAPPROPRIATE DENSITY FOR SITE. The proposed density is inappropriate for this small, environmentally sensitive site. 12.5 units per acre of developable land is an inappropriate density for a site that is less than one acre in size, with major changes in topography which would normally be excluded from the density calculation, and that includes development activities within a regulated area immediately adjacent to wetlands and the Goodwives River that flows southerly to Long Island Sound. The Darien Environmental Protection Commission concluded, and the Planning and Zoning Commission concurs that the development would have an adverse impact on a fragile watercourse with documented stormwater problems. Regardless of whether using gross acreage or net developable lot area, this is clearly a very small buildable area where the applicant has proposed building ten large condominium units.

F. RISK TO PEDESTRIAN SAFETY: The high number of children currently residing on Oak Crest and the absence of any sidewalks makes the proposed intensification in vehicular traffic a public safety risk, both for current residents and residents of the proposed development.

G. TRAFFIC SAFETY: The existing non-conformance of Oak Crest with Town Road Standards means that Oak Crest cannot safely handle the proposed increase in vehicular traffic. The added traffic volume in conjunction with the existing pedestrian issues will cause an increase in risk to motorists, pedestrians and bicyclists on the street.

H. ADVERSE IMPACT ON PUBLIC SAFETY OF RESIDENTS LIVING ON GRANASTON LANE: The record establishes that the proposed drainage system is undersized. During certain rain events the amount of stormwater will exceed its capacity. Further, unless the proposed drainage system can be built as shown on design plans submitted by the applicant and then works perfectly and is properly maintained to continuously work perfectly without fail, there is a likelihood that flood waters of the river would potentially overtop the Granaston Lane bridge and/or undermine the culvert under the bridge. This would create a serious public safety threat for the residents on the

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 18

west side of the Goodwives River. The ability of the drainage to be built and function properly was not shown because the soil tests and subsurface strata assessments were not sufficient to show acceptable conditions throughout the site

I. HEALTH AND SAFETY CONCERNS: In addition to the EPC findings of health and safety concerns, this Commission further concludes:

- (i) Inadequate on-site parking likely to cause public safety problem either on-site or off-site. The Darien Zoning Regulations would require at least 25 on-site parking spaces for ten units. The applicant's proposed regulations provide for only 2 spaces per unit or 20 parking spaces for ten units. Inadequate on site parking spaces will force cars to park within Fire Lanes, on the grass, in the few areas designated for snow storage, along the driveway (reducing the accessibility of emergency vehicles), on Oak Crest, or within the turnaround area. Any or all of these conditions would create a public safety problem.
- (ii) No provision for open space. Normally at least 6,000 square feet of open space or recreational space would be provided for a ten unit development. This project proposes none. There is no public park or public open space adjacent to the site that the residents of this site could make use of. The closest public open space is the playfield at the Royle School, which is about ¼ mile away. Inadequate open space and recreation space for families is a health and safety deficiency.

J. BASED ON THE ABOVE STATED REASONS THE COMMISSION FINDS THAT THE ELEMENTS OF THE SITE PLAN, SUBMITTED AS PART OF THIS APPLICATION, DOES NOT ACCOMPLISH THE OBJECTIVES OF SITE PLAN APPROVAL AS SPECIFIED IN SUBSECTIONS 1024-1025 OF THE DARIEN ZONING REGULATIONS.

K. THE COMMISSION CAN NOT AMEND OR MODIFY OR MAKE REASONABLE CHANGES TO THE SITE PLAN TO PROTECT THESE PUBLIC INTERESTS BECAUSE:

i) **EPC PERMIT WAS DENIED.** The Planning & Zoning Commission cannot modify the proposal, as essential parts of the stormwater management system are in the area regulated by the EPC. Since the stormwater management system is essential to the public health and safety of residents both on and off the property, it would have to be expanded or relocated elsewhere on the site. The Planning & Zoning Commission cannot overrule the EPC, nor can they require the EPC to approve a project. Tab 15 of the 6/9/08 submittal establishes that the application requests "...construction of a portion of the detention/retention basin within 100 feet of the Goodwives River (and within 50 feet of the existing, disturbed wetland located to the north...)" The EPC concluded "that there are many site use or development alternatives available to the applicant that would cause significantly less environmental impact." The EPC found that "feasible and prudent wetland and environmental protection alternatives exist." (EPC decision, page 14). Only EPC, not P&Z, can approve these types of changes to the Site Plan.

ii) **ENGINEERING EXPERTISE NEEDED.** No modification of proposal by the Planning and Zoning Commission can result in adequate protection of public interest. A professional engineer would have to supervise proper and complete soil tests and subsurface strata borings and would need to find an appropriate location on the subject property for the modified stormwater management system, which needs to be sized appropriately for the amount of impervious surface proposed. An engineer or life safety expert would also have to redesign the project to accommodate

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 19

the necessary access for emergency vehicles (Fire and EMS) and their required turnarounds and how to improve access to rear buildings during an emergency. An engineer is needed to analyze existing unresolved fire hydrant water flow issues.

iii) OAK CREST NONCOMPLIANCE WITH TOWN ROAD STANDARDS. The Commission can not cause Oak Crest to comply with Town Road Standards concerning minimum paved road width and sidewalks, thereby improving access for fire and EMS vehicles and pedestrian and traffic safety.

L. RISKS TO PUBLIC HEALTH AND SAFETY CLEARLY OUTWEIGH THE NEED FOR THREE UNITS OF AFFORDABLE HOUSING. Under CGS 8-30g, the Planning & Zoning Commission is called upon to analyze whether the risks to public health and safety clearly outweigh the need for these three units of affordable housing. In this case, the Commission finds that all of the risks to public health and safety identified in this resolution clearly outweigh the need for three units of affordable housing.

M. The Commission hereby acknowledges that a Petition for Intervention Under Connecticut General Statutes Section 22a-19(a) was submitted by Gregory Harmer of 24 Oak Crest on September 30, 2008 during the public hearing process. Under Connecticut General Statutes Section 22a-19, the Connecticut Environmental Protection Act articulates the right of, inter alia, "any person" to intervene as a party on the filing of a verified pleading asserting that the proceeding involves "conduct which has, or is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." (CGS 22a-19(a))

Upon the filing of a verified pleading by an intervenor, the administrative agency reviewing the matter is obliged to consider "the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be approved which does, or is reasonably likely to, have such effect so long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public, health safety and welfare." CGS 22a-19(b).

Under CGS 22a-19, it is incumbent upon the intervenor to initially show that the aforementioned unreasonable adverse effects have, or are reasonably likely to result from the proposed conduct. The applicant is then obliged to respond by addressing the issues raised and demonstrating through evidence that the effects are not significant, or if they are significant that they are not unreasonable in light of all relevant surrounding circumstances and factors.

The Commission shall consider the alleged unreasonable pollution, impairment, or destruction of the public trust in the air, water, or other natural resources due to the proposed action, and it shall not approve or authorize the proposed conduct if it determines that the conduct is reasonably likely to have such effect, so long as considering all the relevant surrounding circumstances and factors, there is feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 20

This Commission finds that the intervenor, Gregory Harmer, has filed a verified pleading in compliance with CGS 22a-19(a).

The Commission has considered the alleged unreasonable pollution, impairment, or destruction of the public trust in the Goodwives River and other natural resources due to the proposed action. The Commission finds that the intervenor has demonstrated that the proposal will unreasonably pollute, impair, or destroy the public trust in the Goodwives River and other natural resources of the State of Connecticut. Based on this finding, the Commission has determined that consideration of feasible and prudent alternatives is required.

The intervenor's actions have resulted in a better understanding of the public trust in the State's natural resources as they relate to the property in question. The intervention has resulted in a more critical evaluation of the proposal and its potential impacts on the environment in general and the Goodwives River in particular. To this end, the petitioners' intervention has clearly advanced the public interest in protecting the natural resources of the State of Connecticut. The petition is granted solely for the purpose of raising environmental issues.

II. WITH REGARD TO THE PROPOSED AMENDMENT OF THE DARIEN ZONING MAP AND ZONING REGULATIONS TO ESTABLISH A NEW HOUSING OPPORTUNITY DEVELOPMENT (HOD) DISTRICT, THE COMMISSION MAKES THE FOLLOWING FINDINGS:

1. HOD REGULATIONS: The proposed zoning district and regulations are outlined in Tab 8 of the applicant's 6/9/08 original submission packet, and as amended in the applicant's 9/30/08 submittal as Tab 3. This proposed regulation amendment seeks to amend Section 311 of the Regulations to add the Housing Opportunity District to the list of residential districts in Darien, and to create a new Section 580 entitled, "Small Site Housing Opportunity Development (HOD) District." The proposed new zoning district and proposed zoning regulations are site specific. (6/9/08, Tab 3) It is clear from the proposed Section 582 that the parcel size criteria are intended to provide that only 26 Oak Crest would meet these criteria. The findings and reasons stated above for denying the site plan application are therefore also reasons for not adopting the proposed zoning district and regulations. For example, the site plan demonstrated that the HOD regulations proposed too small of a site with extreme site limitations and that this is in an inappropriate location for such a high density project that has made no provision for removing the non-developable area from the density calculation and no provision for adequate on-site parking and open space, among other deficiencies.

2) DENSITY: The HOD maximum unit density proposed is 13 units per acre. This proposed density is higher than either the DBR or DMR zones. It is being proposed for a small parcel with only 0.86 acres and only 0.8 acres of developable area. This means the actual proposed density would be 12.5 units per acre of developable area, but the site contains less than an acre. In the DBR zone, the minimum parcel size is 3 acres. A larger parcel affords some flexibility with respect to setbacks, open space and the location and placement of buildings, driveways, parking, utilities, equipment, drainage systems, accessory structures, emergency access, and other important aspects of a proposed development. On such a small parcel, with environmental limitations and such a high proposed density, there is little or no flexibility.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 21

4) **SETBACKS:** The proposal is to reduce minimum lot frontage from 100 feet to 40 feet (a 60% reduction); reduce the minimum side yard setback by 33% and minimum rear yard setback by 60%. The proposed minimum side and rear yard setbacks of only 10 feet on this site is inappropriate and the problem is then compounded by increasing the maximum building height from 28 feet to 40 feet. In the DBR zone the minimum side and rear setback is 25 feet (DBR 504.8 and 504.9). This type of separation allows for the safe access to third floor bedroom windows in emergency situations and still allows for trees and landscaping in the yards.

5) **BUILDING HEIGHT:** Proposed maximum building height is 40 feet. In existing multi-family districts the maximum building height is 28 feet or 30 feet. This significant 33% increase in building height is unnecessary and detrimental to light and air needs of other dwellings in the area. Other existing mixed income and affordable housing projects did not require this increase in permitted building height. Emergency access to the higher buildings would be further and more severely limited, thus endangering the safety of the residents and the neighbors.

6) **IMPERVIOUS SURFACE:** This application proposes to increase the impervious surface for the entire 1.18 acre site (including the hammerhead turnaround area) from 17% to 52% (an increase of 205%). Michael Aurelia, a wetland soil scientist, stated that water quality is impacted when the impervious surface exceeds 20% of the total site area. He further stated that the Commission should not allow new developments to exceed 20% impervious surface. (11/6/08 minutes, page 18) The applicant's proposed HOD regulations would allow 75% maximum developed site area. Phil Moreschi, P.E. from Fuss & O'Neill, state that the Goodwives River "will suffer due to the extensive development that has been proposed." He further stated that the proposed development will cause the stormwater discharge to increase dramatically and that the development does not meet the guidelines of the Stream Channel Protection portions contained within the 2004 Connecticut Department of Environmental Protection Storm Water Quality Manual. (11/6/08 minutes, page 19). This site is immediately adjacent to the Goodwives River that flows southerly to Long Island Sound.

7) **INADEQUATE ON-SITE PARKING REQUIREMENTS:** 2.5 parking spaces per unit have proven to be a reasonable parking requirement, particularly for large two and three bedroom units that are not age or otherwise occupancy restricted. This application proposes that all 10 units be 2 and 3 bedroom units. The applicant's regulations would require only 2 spaces per unit, no doubt because the site is too small to provide the amount of parking that will be actually required. Failure to provide sufficient on site parking will cause safety dangers to the residents of the site and of the surroundings.

NOW THEREFORE BE IT RESOLVED that the application to amend zoning map and amendment of zoning regulations is hereby **DENIED BASED ON THE ABOVE FINDINGS AND FOR THE FOLLOWING REASONS:**

A. **PROPOSED SITE PLAN DEMONSTRATES THAT PROPOSED DENSITY IN HOD ZONE REGULATIONS WOULD BE INAPPROPRIATE** for the proposed site. The proposed density causes excessive impervious surface that would increase stormwater flooding and impact

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 22

water quality. The density of the proposed regulation would be entirely inappropriate on this environmentally sensitive site.

B. PROPOSED SITE PLAN DEMONSTRATES THAT PROPOSED SETBACK REDUCTIONS AND INCREASED MAXIMUM BUILDING HEIGHT IN HOD ZONE REGULATIONS WOULD IMPEDE ACCESS TO REAR OF BUILDINGS BY FIRE DEPARTMENT. Only 10 feet setbacks would make it more difficult for emergency equipment and would restrict the ability of emergency personnel to safely place ladders to gain emergency access to the rear of the residential structures.

C. PROPOSED SITE PLAN DEMONSTRATES THAT POTENTIAL 75% DEVELOPABLE AREA ALLOWED UNDER PROPOSED HOD REGULATIONS WOULD UNREASONABLY INCREASE IMPERVIOUS SURFACE. Increasing impervious surface from 17% to 52% and adopting regulations that would allow for 75% maximum developed site area are not appropriate for this environmentally sensitive site, and would increase stormwater flooding and impact water quality. The density of the proposed regulation would be entirely inappropriate on this environmentally sensitive site. Allowing such an intensive development in a single family residential zone on an environmentally sensitive site is unwarranted.

D. INADEQUATE ON-SITE PARKING REGULATIONS WOULD CREATE PUBLIC SAFETY PROBLEM. The proposed regulations require only 20 rather than at least 25 on-site parking spaces. Insufficient on site parking spaces will force cars to park within Fire Lanes, on the grass or in the few areas designated for snow storage, along the driveway (reducing the accessibility of emergency vehicles), on Oak Crest or within the turnaround area, any of which would create a public safety problem.

E. INAPPROPRIATE SITE PLAN DEMONSTRATES WHY PROPOSED REGULATIONS ARE INAPPROPRIATE. The site plan submitted with the application shows that the HOD zoning regulations are not appropriate for the subject property. The Commission would normally want to be assured that if they exercise their legislative powers, that the subject zoning map and regulation amendment would be logical, practical, and appropriate for the property(ies) which are to be rezoned and for the Town. In this case, only one relatively small property is the subject of the zone change, and the property clearly cannot accommodate a project designed by the applicant pursuant to the proposed regulations.

III. WITH REGARD TO PROPOSED AMENDMENT TO THE TOWN PLAN OF CONSERVATION & DEVELOPMENT, THE COMMISSION MAKES THE FOLLOWING FINDINGS:

1. APPLICATION IS NOT CONSISTENT WITH DARIEN'S 2006 TOWN PLAN OF CONSERVATION AND DEVELOPMENT: Contrary to applicant's assertion, this proposal is not consistent with Darien's 2006 Town Plan of Conservation and Development. (6/9/06, Tab 2)

2. SITE IS NOT SUITABLE TO BE INCLUDED IN EITHER DBR OR DMR ZONE: The proposed amendment of the Town Plan is incompatible with Chapter 6 of the Town Plan which calls for multifamily residential development to continue to be encouraged within the existing

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 23

DBR and DMR Zones. The proposed HOD district is incompatible with the existing DBR and DMR regulations, as set forth in Section II above.

3. SITE NOT LOCATED NEAR TRANSPORTATION FACILITIES: The proposed amendment of the Town Plan is incompatible with Chapter 6 of the Town Plan which provides that Darien should have “high density housing located near transportation facilities such as train stations, and within walking distance to local shopping both in Noroton Heights and downtown Darien. For example, 26 Oak Crest is approximately a 0.8 mile walk from the Darien Train Station and almost the same distance from the nearest public transit bus stop.

4. SITE NOT A POTENTIAL DEVELOPMENT AREA FOR AFFORDABLE HOUSING IDENTIFIED IN REPORT TO THE PLANNING AND ZONING COMMISSION FROM THE AFFORDABLE HOUSING SUBCOMMITTEE DATED JULY 10, 2007. This report identified potential development areas for affordable housing. The 26 Oak Crest parcel does not conform to these criteria. Specifically, 26 Oak Crest is not adjacent to existing multi-family housing or a transitional zone; nor is it located where higher density housing now exists. The report recommended that affordable housing not be located on dead-end roads, such as Oak Crest, which concentrate all traffic flow in a restricted area. The report also recommended that higher density development be located near train stations. Neither Oak Crest nor any other small residential dead-end street like Oak Crest were identified as one of the eight collector or arterial roads to be considered for potential development of affordable housing. 26 Oak Crest was not one of the 10 properties identified by the Subcommittee to be considered further for affordable housing, nor is 26 Oak Crest similar in character or geographic location to any of these other properties.

5. NEIGHBORHOOD CONSERVATION: State Plan of Conservation and Development includes this area within the Neighborhood Conservation Zone. Contrary to the applicant’s assertion, this proposal does not constitute “infill development.” (6/9/08, p4) The proposed development is a 10 unit condominium at the far to the end of a dead end street that contains only single family houses, and which is a quiet neighborhood. Such a development is completely contrary to the character, quality and stabilization of the existing neighborhood.

6. DAHAC OPPOSED: Within the past three years, the Town of Darien Board of Selectmen appointed the Darien Affordable Housing Advisory Commission (DAHAC). That Commission, which is the principal advocate for affordable housing in Darien, sent a memo regarding this application, noting that they oppose it from a planning perspective. DHAC stated that they “agree with the conclusions of the Planning and Zoning Subcommittee on Affordable Housing which pointed out specific areas for affordable housing. This neighborhood on Oak Crest is not remotely near any of these areas.”

7. TOWN PLAN DETERMINED THAT OTHER SITES ARE MORE SUITABLE FOR MULTI-FAMILY HOUSING: Within the DBR zone, which is generally in or adjacent to the Darien downtown area, this Commission has approved multifamily developments have been constructed by non-profit and for-profit developers of multi-family housing. These seven multi-family developments have a total of 220 units and include 62 affordable units. The affordable units include a 30 unit affordable project (Clock Hill Homes), a 30 unit senior housing project (Old Town Hall Homes) and two affordable inclusionary units in Villager Pond condominiums.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 24

The Town recently purchased the former 1.9 acre Darien Library site for \$4.1 million, which is already partially located with the DBR zone, and the Town is currently exploring utilizing this parcel for additional affordable housing.

The DMR zone is near the Noroton Heights train station and shopping center. Within the DMR zone 189 units have already been constructed by Avalon on 31+/- acres, which include 47 affordable units. The Commission currently has an application from the Darien Housing Authority to expand the DMR zone across the street from the Noroton Heights commercial district to the Housing Authority's 10.5 acres. The Housing Authority's pending application to expand the DMR zone to their site would mean that the existing 53 older affordable units could be replaced by up to 111 +/- affordable units. That public hearing is still open, and has been continued to January 13, 2009.

8. GOODWIVES RIVER MANAGEMENT PLAN: The Planning and Zoning Commission agrees with the EPC that the Goodwives River is a "significant and fragile watercourse in Darien." The 2004 Fuss & O'Neill Goodwives River Watershed Management Plan documented that the Goodwives River suffers from long term impacts from increases in the volume and duration of flooding causing stream channel erosion and degradation from increased sedimentation. This proposed amendment to the Town Plan would be inconsistent with the Goodwives River Management Plan.

9. THE PROPOSED AMENDMENT TO THE TOWN PLAN IS INCOMPATIBLE WITH 2006 TOWN PLAN OF CONSERVATION AND DEVELOPMENT: Land use consultant Hiram W. Peck opined that the "Approval of HOD District would mean that any size parcel could be proposed for rezoning and development at any density in any zone and in any area of Darien without regard to the effect on the entire comprehensive plan, the zone or the zoning regulations in the entire town." He further stated that "the de minimus addition to the affordable housing stock (3 units) does not warrant the significant damage to the public interest." As further noted by Mr. Peck, "The areas of noncompliance are substantial and are at odds with the basic notion of promotion of health, safety and welfare of the existing residential area".

10. ALLEGATIONS BY NEIGHBORS. At the September 30, 2008 public hearing on this matter, Mr. Golden, one of the neighbors of the subject property claimed that this application is being used as a means to blackmail neighbors. He submitted a copy of the complaint that he has filed against the LLC and the Hamers. He believed that the application was not in good faith. He believed that this 8-30g application is being used as a threat to get support from the neighbors to allow the property owner to subdivide his property. He described a meeting which was held between neighbors and the attorney for the Hamers. A November 20, 2006 letter was submitted for the record in this matter which invites the neighbors to said meeting. The Commission very specifically and very intentionally will not address the issue of blackmail, the neighbor's allegations, or whether the application is in good faith. The complaints brought up by Mr. Golden in his complaint against the applicant and the Hamers are matters to be decided outside of this resolution, and by other authorities. Neighbors also raised concerns about the economic viability of the project and asked for some proof of financial capacity of the applicant to implement the project. Applicant never addressed those issues or provided the requested information.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 25

NOW THEREFORE BE IT RESOLVED that the proposed amendment to the Town Plan of Conservation and Development is hereby DENIED BASED ON FINDINGS 1-9 ABOVE AND FOR THE FOLLOWING REASONS:

A. PROPOSED AMENDMENT OF TOWN PLAN IS CONTRARY TO TOWN PLAN OF CONSERVATION AND DEVELOPMENT RECOMMENDATIONS FOR INCREASING AFFORDABLE HOUSING. The proposed district is out of harmony with the comprehensive plan for the good of the community as a whole.

B. INAPPROPRIATENESS OF SITE PLAN AS SET FORTH IN SECTION I ABOVE AND THE PROPOSED REGULATIONS CONCLUSIONS DETAILED IN SECTION II ABOVE DEMONSTRATES THE INAPPROPRIATENESS OF THE PROPOSED AMENDMENT OF TOWN PLAN.

C. PROPOSED SITE HAS NOT BEEN IDENTIFIED AS A POTENTIAL SITE FOR AFFORDABLE HOUSING NOR DOES THE SITE MEET THE CRITERIA FOR BEING CONSIDERED AN APPROPRIATE LOCATION FOR AFFORDABLE HOUSING.

D. PROPOSED HOD DISTRICT IS DETERIMENTAL TO ONGOING EFFORTS TO INCREASE AFFORDABLE HOUSING IN DARIEN. The applicant has not claimed to have any experience as either a for-profit or non-profit developer of multi-family housing or affordable housing. Initially, the applicant discussed creating a second building lot for a single family residence. The current proposal was filed under 8-30g. This applicant's proposed high density development on such a small lot, on an environmentally sensitive site, on a dead -end residential street, that presents such unique public safety issues and is not located near either downtown Darien or the Noroton Heights train station, which would provide only three additional affordable units, is not helpful to the ongoing efforts within Darien to take serious steps toward creating affordable housing on larger and more appropriately located sites that do not present the same environmental and public safety issues and would be compatible with the Town Plan of Conservation and Development and can address the need for affordable housing in a more meaningful and responsible manner. This proposal, however, is so unreasonable that the Darien Affordable Housing Advisory Commission took the unprecedented action of opposing this affordable housing application.

IV. IN CONCLUSION,

NOW THEREFORE BE IT RESOLVED that the Affordable Housing Application, Site Plan Application #262, and Land Filling & Regrading Application #211 are hereby DENIED DUE TO THE ABOVE FINDINGS AND REASONS; AND:

NOW THEREFORE BE IT RESOLVED that the application to amend zoning map and amendment of zoning regulations is hereby DENIED DUE TO THE ABOVE FINDINGS AND REASONS; AND

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 26

NOW THEREFORE BE IT RESOLVED that the proposed amendment to the Town Plan of Conservation and Development is hereby DENIED DUE TO THE ABOVE FINDINGS AND REASONS

This decision is necessary to protect the substantial public interests in health, safety and/or other matters which the Commission may legally consider and such public interest cannot be protected by reasonable changes in the affordable housing development plan for the reasons stated above.

Mr. Conze opened the Public Hearing portion of the meeting and reading the following agenda item:

PUBLIC HEARING

Land Filling & Regrading Application #220, Amendment of Subdivision Application #513, Carole Spivey, 95 Gardiner Street. Proposal to provide a separate driveway access to 95 Gardiner Street, rather than the shared driveway with #93 and #97 Gardiner Street previously approved as part of Subdivision Application #513. The subject property is located on the west side of Gardiner Street, approximately 120 feet south of its intersection with Laforge Road, and is shown on Assessor's Map #46 as Lot #77D in the R-1/5 Zone.

Randy Green of 97 Gardiner Street explained that houses at 93, 95, and 97 Gardiner Street share a common, loop driveway that has two curb cuts on Gardiner Street. This has been in effect since the subdivision was approved in 1976. The plan is to make a new driveway to serve 95 Gardiner Street directly from the Town street so that each of the houses will have their own driveway. He explained that a permit had been obtained for a new curb cut from the Department of Public Works, and that the site work was started and the driveway was roughed in. Walls were constructed to separate the existing driveways after the new driveway was cut in, and the work involves significant cost to the property owners. When the owners at #95 and their contractor were notified by the Zoning Department that the work did not comply with the Regulations, a Stop Work Order was received. The work stopped in response to the order.

Mr. Green explained that the 1976 restriction on the Subdivision Map indicates that any new driveway shall have a maximum grade of 1% from the road edge to the edge of the street right-of-way (the beginning of the private property). The roughed in new driveway for #95 Gardiner Street has approximately an 8% grade from the edge of the paved road to the edge of the right-of-way. As suggested in the Stop Work Order, they have hired a State licensed professional engineer to devise a plan to submit to the Planning and Zoning Commission.

John Martucci, P.E., said that he has analyzed the situation and provided drawings and plans to illustrate what he believes to be a reasonable and safe solution to the problem. His plan calls for a 5% grade between the paved edge of the street and the edge of the right-of-way and a 5% percent grade near the garage that is attached to the house. Between these two areas, a portion of the driveway will be approximately a 12½ % grade. The current standards allow for driveways to not exceed 10% grade at any point. Mr. Martucci said that if properly maintained, the 5% grade near the street will not be a hazard because the slope is relatively short and is consistent with other driveways in town. The plan does allow for a turn-around area within the site so that there will be no need for motorists to back into Gardiner Street. He also noted that the sight line at the

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 27

intersection of the new driveway with Gardiner Street exceeds 300 feet, which is safe for the speed limit of the street. Some of the storm water runoff from the new driveway will go into a catch basin on the private property, and the runoff water below that catch basin will proceed down the new driveway and into the gutter along Gardiner Street. It will then travel north to a catch basin in Gardiner Street. Some pavement is being removed as part of the project, and so there is no net increase in the amount of impervious surface.

Mr. Ginsberg explained that the staff had provided the Commission with a copy of the 1976 minutes and Subdivision Map as background information. Mr. Hutchison noted that storm water runoff was the big issue in 1976.

Mr. Martucci said that the driveway modifications will not change the flow pattern of surface water. He said that the driveway surface can be rougher than normal to make sure that extra traction is available for motorists.

Mr. Spain said that a 1% slope near the street edge allows for vehicles to stop before they enter the street, and also allows a safe area for vehicles leaving the street as they turn into the driveway. Mr. Martucci said that the industry standard for parking lots is not to exceed a 5% grade. A 5% grade represents a one-half foot (or six inch) change in elevation over the course of 10 feet. This is not really a steep slope for a short distance and the 5% grade design in his plan does allow a vehicle to pull off the street completely before encountering the steeper 12 ½ % grade. It will not be a hazard of someone sliding back into the street because the full car will be off the street before getting to the steeper portion of the driveway. Mr. Martucci mentioned that by comparison, a handicapped access ramp is at an 8% slope.

Mr. Hutchison noted that this isn't a normal situation because the property owners' representative did obtain a Permit from the Department of Public Works, and it is a short distance. He said that the condition on the map is clear, but it is not typical for a home buyer or title searcher to read all the notes or conditions on a map. He suggested that it might be better to have the condition be a more explicit provision in the Land Records.

Bill Hughes explained that he was the original developer of the property, and he has no issue with the 5% grade. He said that it will be very manageable, and not a safety concern. He said that he is concerned about the eventual use and condition of the access strip of land that is 10 feet wide and leads from Gardiner Street to the open space parcel at the rear of the site. He said that where the common driveway passes through the access strip, that portion of the open space parcel has been allowed to be paved. He said that access strip runs between houses 93 and 95. He said that some of the asphalt in that area would be removed, and he said that it would be appropriate to remove all the asphalt from the open space strip as part of this plan.

Mr. Green of 97 Gardiner Street said that it is not clear how much pavement needs to be removed from the common driveway, and that some asphalt will be removed but it might not be all of the asphalt within the common driveway that passes over the access strip to the open space. Mr. Hughes said that they should remove all the asphalt from the access strip if the shared driveway is being changed.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 28

Maria Franco of 93 Gardiner Street asked about what would happen in the 10 foot strip that Mr. Hughes speaks of. She said that she does not know what he plans to do with that strip. In the discussion that followed, the Commission members referred to the photographs that were submitted with the application material, and it was determined that some of the photographs mislabeled the street numbers of the houses involved.

Mr. Conze said that the Planning and Zoning Commission is being asked about the creation of a new driveway and the regrading involved in the new driveway.

There being no further comments, the following motion was made: That the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved. The Public Hearing was closed.

The General Meeting was resumed at approximately 9:05 p.m.

Resumption of GENERAL MEETING

Discussion and deliberation only, if public hearing closed:

Land Filling & Regrading Application #220, Amendment of Subdivision Application #513, Carole Spivey, 95 Gardiner Street. Proposal to provide a separate driveway access to 95 Gardiner Street, rather than the shared driveway with #93 and #97 Gardiner Street previously approved as part of Subdivision Application #513. The subject property is located on the west side of Gardiner Street, approximately 120 feet south of its intersection with Laforge Road, and is shown on Assessor's Map #46 as Lot #77D in the R-1/5 Zone.

To accommodate the public, the Commission members adjusted the meeting agenda to discuss the Gardiner Street project. It was agreed that they would not take any formal action on the application, but they would discuss it.

Mr. Spain said that it was notable that a Street Opening Permit had been obtained from the Public Works Department, but the Commission must consider the request on its merits. He said that it is an unusual situation, and it does make some sense to agree with the request to allow the short driveway to be steeper than normally permitted. Other members agreed. The staff will draft a resolution for consideration at a future meeting.

Chairman Conze read the following agenda item:

Discussion, deliberation, and possible decision regarding the following applications:

Business Site Plan #212-B/Special Permit, Park Animal Hospital of Darien, 168 Noroton Avenue. Proposing to demolish the existing garage, remove the rear staircase on the rear building, and construct an addition to the rear building, establish a satellite veterinary hospital within that building, modify the parking lot, and perform related site development activities at 168 Noroton Avenue. *PUBLIC HEARING CLOSED: 12/2/2008. DECISION DEADLINE: 2/5/2009.*

A draft Resolution was discussed. Commission members noted that neighbors were concerned about potential odor problems, and that it would be appropriate to modify Condition D regarding

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 29

the neat and orderly fashion in which the facility is to be maintained, and that no odor problem is to be generated by the use or activities. Also, Item #3 should be clarified regarding the fact that the front and rear properties were intertwined for development purposes, but were never combined as a single lot. All members agreed with these modifications.

The following motion was made: That the Commission adopt the following revised Resolution to approve the project. The motion was made by Mr. Spain, seconded by Mr. Finke and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009**

Application Number: Business Site Plan #212-B/Special Permit
Park Animal Hospital of Darien, 168 Noroton Avenue

Street Address: 168 Noroton Avenue
Assessor's Map #40 Lot #30

Name and Address of Applicant: Wilder G. Gleason, Esq.
And Applicant's Representative: Gleason & Associates
455 Boston Post Road, Suite 201
Darien, CT 06820

Name and Address of Property Owner: Noroton Properties, LLC
Sherif Lawendy (contract purchaser)
c/o Park Animal Hospital, LLC
17 Park Street
Norwalk, CT 06851

Activity Being Applied For: Proposing to demolish the existing garage, remove the rear staircase on the rear building, and construct an addition to the rear building, establish a satellite veterinary hospital within that building, modify the parking lot, and perform related site development activities at 168 Noroton Avenue.

Property Location: The subject property is on the east side of Noroton Avenue, approximately 225 feet south of its intersection with West Avenue.

Zone: SB

Date of Public Hearing: December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: November 20 & 26, 2008

Newspaper: Darien News-Review

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 30

Date of Action: January 6, 2009

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 670, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds that:

1. The applicant proposes to demolish the existing garage, remove the rear staircase on the rear building, and construct an addition to the rear building, establish a satellite veterinary hospital within that building, modify the parking lot, and perform related site development activities at 168 Noroton Avenue. The subject building has been used as Burr Roofing for many years. The adjacent property in front of this building at 170 Noroton Avenue (Lot #29) is now used by William W. Seymour & Associates, a land surveying firm.
2. Under Section 664c of the Darien Zoning Regulations, a veterinary hospital/clinic is a Permitted Use Requiring a Special Permit in the Service Business (SB) Zone. A description of the proposed business was submitted by the applicant in a November 21, 2008 letter to the Commission.
3. The Zoning Chart submitted on the Zoning Location Survey shows that the applicant is proposing a decrease in both building coverage and developed site area. Both will be modified to meet current maximums allowed within the Service Business Zone. As noted within a November 25, 2008 letter, the southerly covered staircase of the front building at 170 Noroton Avenue will be removed to keep the combined properties at a maximum 20% building coverage. The emergency egress stairway on the east (rear) side of the rear building (the proposed veterinary building) will remain intact contrary to the original proposal. Due to the shared parking and access /egress agreement, for site development and utilization purposes, for building coverage and developed site area calculation purposes, as well as for common parking area, access and egress driveways and other purposes, the two adjacent lots have been considered as interrelated. They are being examined together due to their interrelated nature and the fact that an approved shared parking agreement will be in place covering both lots. The front and rear lots, however, are still legally two separate parcels.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 31

4. There is now a shared parking agreement with 170 Noroton Avenue (the front building on the adjacent lot). The proposal is to increase the amount of on-site parking to 16 spaces between the two lots (approximately ½ of the spaces on each property). Although the parking layout has been designed to accommodate some tandem parking, those tandem spaces cannot be counted towards the total number of spaces. Based upon the submitted application materials and public hearing testimony, the Commission believes that the proposed parking will be satisfactory for both proposed businesses. A formal written shared parking agreement shall be filed in the Darien Land Records and submitted for the record in this matter, after approval by the Planning and Zoning Director.
5. The Commission has considered the sight lines on Noroton Avenue and these will not change as part of this application.
6. The Architectural Review Board (ARB) has reviewed the plans as part of ARB #43-2008 on November 18, 2008. They recommended building modifications, and those modifications were shown to the Planning and Zoning Commission at the December 2, 2008 public hearing.
7. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
8. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
9. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
10. The location and nature of the proposed use, the size and height of the building are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
11. The elements of the Site Plan, submitted as part of this application, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #212-B/Special Permit is hereby approved subject to the foregoing and following stipulations, modifications, and understandings:

- A. Construction and renovation of the building and modification of the existing parking lot shall be in accordance with the plans entitled:
 - Zoning Location Survey (Proposed Conditions) 168 & 170 Noroton Avenue prepared for Sherif Lawendy, by William W. Seymour & Associates, dated October 16, 2008 and last revised November 26, 2008.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 32

- B. The Darien Zoning Regulations do not have a specific formula regarding the minimum number of on site parking spaces required for a veterinarian because the amount of employee, customer and delivery parking can vary greatly depending on how the business is operated. In this case, the applicant has demonstrated to the Commission's satisfaction under Section 904 t, that the proposed on site parking will be sufficient to accommodate the needs of workers, customers and deliveries for the existing surveying business in the front building and the proposed veterinarian business in the rear building.
- C. During the site work, the applicant shall utilize any sediment and erosion control measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the project. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. Because the proposed veterinary hospital/clinic is directly adjacent to a residential zone and residential properties, the Commission is hereby restricting the hours of operation as follows: from 7:30 AM to 6 P.M. on Monday Tuesday, Wednesday and Friday; and from 7:30 A.M. to 2 P.M. on Thursday and Saturday. Any desire to expand these hours of operation will require subsequent review and action by the Commission. The property abuts a residential neighborhood and shall be kept in a neat, sanitary, and orderly fashion.
- E. Per the applicant's representations, there will be no unattended animals outside. No animals will be kept in outside runs, open air pens or cages. It will be very rare for an animal to be kept at the site overnight. No boarding service operation has been requested, and none is allowed nor approved. At all times when there are animals in or about the building, there shall be an attendant present.
- F. A final "as-built" survey is hereby required to certify that the site development is in compliance with the approved plans and the Zoning Regulations. A licensed Land Surveyor shall certify in writing prior to the issuance of a Certificate of Occupancy that all work has been properly completed in accordance with the approved plans. This includes, but is not limited to, the location of the addition, the modifications of the parking and landscape areas, and the removal of the staircase from the south side of the 170 Noroton Avenue building. The two separate parcels have been treated as one for compliance with Building Coverage, parking and overall site development due to the shared parking agreement, but the front and rear lots are still, legally two separate parcels.
- G. Because the applicant is proposing to decrease building coverage and developed site area, the Commission is not requiring the installation of any added drainage facilities. This does not preclude the requirement for drainage as part of any subsequent application submitted by the property owner.
- H. The granting of this Business Site Plan/Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town,

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 33

State, or other regulating agency. This includes, but is not limited to, review and action by the Darien Fire Marshal prior to approval of a Zoning or Building Permit.

- I. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (January 5, 2010). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final plans by the Chairman. All completed requirements and materials shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void. A Special Permit form shall also be filed in the Darien Land Records by the applicant or property owner within 60 days of this approval.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #240, Walter Norman, 131 Long Neck Point Road. Proposing to construct additions and alterations to the existing residence, repair/replace existing patio, install drainage facilities, abandon existing septic system and tie into sanitary sewer line and perform related site development activities within a regulated area.

Commission members discussed the fact that the notice in the Darien Land Records about the drainage should be modified to be more clear. All members agreed with the modification. The following motion was made: That the Commission adopt the following revised Resolution to approve the project. The motion was made by Mr. Hutchison, seconded by Mr. Finke and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009**

Application Number: Coastal Site Plan Review #240

Street Address: 131 Long Neck Point Road
Assessor's Map #59 Lot #7

Name and Address of Applicant & And Property Owner	Walter Norman 131 Long Neck Point Road Darien, CT 06820
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Name and Address of Applicant's Representative:	Steve McAllister, PE McChord Engineering
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PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 34

1 Grumman Hill Road
Wilton, CT 06897

Activity Being Applied For: Proposing to construct additions and alterations to the existing residence, repair/replace existing patio, install drainage facilities, abandon existing septic system and tie into sanitary sewer line and perform related site development activities within a regulated area.

Property Location: The subject property is on the east side of Long Neck Point Road, approximately 1,500 feet south of the intersection of Long Neck Point Road and Pear Tree Point Road near the Ring's End Road bridge.

Zone: R-1 Zone

Date of Public Hearing: December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 810 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to construct additions and alterations to the existing residence, repair/replace existing patio, install drainage facilities, abandon existing septic system and tie into sanitary sewer line and perform related site development activities within a regulated area. It was noted during the public hearing that although substantial renovation will be occurring to the residence, this is not a "teardown". If the entire residence is razed, there

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 35

would be a need to get a variance for lot width from the Zoning Board of Appeals prior to construction a new residence on the property.

2. The State of Connecticut Department of Environmental Protection (DEP) Office of Long Island Sound Programs sent a letter dated November 13, 2008, noting that they "...have found no inconsistencies in the proposal and have no additional comments."
3. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
4. The proposed activities' potential adverse impacts on coastal resources, as modified within this resolution, are acceptable.
5. The proposed activities, as modified within this resolution, are consistent with the goals and policies in Section 22a-92 of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #240 is hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction shall be in accordance with the plans submitted to and reviewed by the Commission. These include:
 - Site Development Plan, 131 Long Neck Point Road, by McChord Engineering Associates, Inc., last revised 10-28-08, Drawing No. SE1.
 - Construction Notes And Details, 131 Long Neck Point Road, by McChord Engineering Associates, Inc., last revised 10-28-08, Drawing No. SE2.
 - Additions/Alterations 131 Long Neck Point, by Bartels.Pagliaro Architects, LLC, last revised 9-11-08.
- B. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- C. The applicant shall install the drainage system as shown on the submitted "Site Development Plan" (in Condition A, above). The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets or upon the protected coastal resources. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 36

- D. Prior to the issuance of a Zoning and Building Permit for the proposed renovated dwelling, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, a Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner. The actual plan shall be filed in the Planning & Zoning Department and/or in the Land Records as well. The drainage maintenance plan shall require the property owner and all subsequent property owners of 131 Long Neck Point Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
- E. Upon completion of the work, the applicant shall provide written verification and photographs documenting the completion of the project and compliance with the approved plans. This shall include written certification for the project's professional engineer that the drainage facilities have been installed according to the approved plan.
- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- G. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. Any permit to replace the existing float will need review and action by the State of Connecticut DEP. Approval from the Darien Sewer Commission and Darien Health Department are needed to connect to the sanitary sewer system and to abandon the existing septic system.
- H. This permit shall be subject to the provisions of Section 815 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (January 5, 2010). This may be extended as per Section 815.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman.

Chairman Conze read the following agenda item:

Flood Damage Prevention Application #267, Land Filling & Regrading Application #217, James & Hallie Palen, 45 Brookside Road. Proposing to install driveway backup area, construct a patio, construct a new deck with support posts, install a rain garden, and to remove soil and construction of associated retaining wall and perform related site activities within a regulated area. *PUBLIC HEARING CLOSED: 12/2/2008. DECISION DEADLINE: 2/5/2009.*

Commission members noted that due to the existing Stipulated Judgment, the applicant will need to obtain the neighbors' signatures regarding any additions to the building, but the regrading is subject only to Environmental Protection Commission and Planning and Zoning Commission approvals.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 37

The following motion was made: That the Planning and Zoning Commission adopt the following Resolution to approve the entire project. The motion was made by Mrs. Grimes, seconded by Mr. Hutchison and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009**

Application Number: Flood Damage Prevention Application #267
Land Filling & Regrading Application #217

Street Address: 45 Brookside Road
Assessor's Map #15 Lot #17

Name and Address of: Matthew Popp
Applicant's Representative: Environmental Land Solutions
8 Knight Street, Suite 203
Norwalk, CT 06851

Name and Address of: James & Hallie Palen
Property Owner: 45 Brookside Road
Darien, CT 06820

Activity Being Applied For: Proposing to install driveway backup area, construct a patio, construct a new deck with support posts, install a rain garden, and to remove soil and construction of associated retaining wall and perform related site activities within a regulated area.

Property Location: The subject property is on the west side of Brookside Road, approximately 50 feet north of its intersection with Prospect Avenue.

Zone: R-1/2

Date of Public Hearing: December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices
Dates: November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: APPROVED WITH
CONDITIONS

Scheduled Date of Publication of Action:
January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 38

- the proposed use and activities must comply with all provisions of Sections 406, 820, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. This application is to install driveway backup area, construct a patio, construct a new deck with support posts, install a rain garden, and to remove soil and construction of associated retaining wall and perform related site activities within a regulated area.
2. The Darien Environmental Protection Commission (EPC) approved the submitted application as part of EPC #48-2008 on November 5, 2008. That approval is hereby incorporated by reference.
3. During the public hearing, the applicant's representative noted that all proposed new construction is outside of the 100-year flood elevation. The small portion of proposed, upper level deck or wooden walkway on the southwest side of the house will be suspended over flood hazard area, but will **not** have any support posts down to the ground in the flood area.
4. A Restrictive Covenant (Volume 941 Page 302 of the Darien Land Records) applies to the subject property. That Covenant requires the property owner to obtain the written consent of the Neighbors for any enlargement of the building or additions. The proposed new deck would be considered an enlargement of the building or an addition.
5. It is specifically noted that part of the work proposed, such as the installation of the rain garden, a new stepping stone walk, repair of an existing retaining wall at the edge of the watercourse, repair and resetting of the stone edge along the Goodwives River, removal of vines from within the Conservation Easement area, regrading with an associated retaining wall on the southeast corner of the property near the street intersection, and a new driveway backup area (and removal of an associated wall) does not require any Zoning and Building Permits and are not considered enlargement of the existing building or additions to the building.
6. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 39

7. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
8. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #267 and Land Filling & Regrading Application #217 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and other activity shall be in accordance with the plans entitled:
 - Landscape Plan Palen Residence, 45 Brookside Road, by Environmental Land Solutions, dated 7/23/08 and last revised 10/15/08, Drawing No. LP.1.
- B. The filling/regrading of the property has been shown on the submitted Plan. No filling or regrading beyond that shown on the Plan is authorized.
- C. As noted above, no new or expanded structure, not even support posts, will be in the flood hazard area. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- D. During regrading and construction, the applicant shall utilize the sediment and erosion controls illustrated on the plan and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. Once the construction work is complete and prior to the issuance of a Certificate of Zoning Compliance, the applicant shall submit verification from the project engineer that all aspects of the building construction and the regrading activity have been completed in compliance with the approved plans and the flood damage prevention regulations. A final “as-built” survey is hereby required to verify that the final grading and site work are in compliance with the approved plans and the Flood Damage Prevention Regulations.
- F. The Commission acknowledges that a Restrictive Covenant applies to the subject property and any proposed additions to the existing residence. It is the property owner’s responsibility to get the written consent of the neighbors prior to applying for any necessary Zoning or Building Permits for construction. A copy of the written permission from the neighbors shall accompany the Zoning and Building applications so that such information can be added to this file for future reference.
- G. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 40

- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. This permit shall be subject to the provisions of Section 829 f of the Darien Zoning Regulations, including but not limited to, submission of certification that the work has been completed in conformance with the permit, and implementation of the approved plan within one year of this action (January 5, 2010). This may be extended as per Section 829f.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Land Filling & Regrading Application #216, Ellen McCue, 17 Top O'Hill Road. Proposing an "after the fact" application to complete filling and regrading, retaining wall construction, and installation of a pool with associated pool terrace, and perform related site development activities. *PUBLIC HEARING CLOSED: 12/2/2008. DECISION DEADLINE: 2/5/2009.*

Commission members discussed the Draft Resolution. The following motion was made: That the Commission adopt the following Resolution to approve the project. The motion was made by Mrs. Grimes, seconded by Mrs. Finke and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009**

Application Number: Land Filling & Regrading Application #216

Street Address: 17 Top O'Hill Road
Assessor's Map #29 Lot #87

Name and Address of Property Owner	Brandon & Ellen McCue 17 Top O'Hill Road Darien, CT 06820
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Name and Address of Applicant & Applicant's Representative:	Tracy Rigo Stecks Nursery 100 Putnam Park Road Bethel, CT 06801
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PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 41

Activity Being Applied For: Proposing an “after the fact” application to complete filling and regrading, retaining wall construction, and installation of a pool with associated pool terrace, and perform related site development activities.

Property Location: The subject property is on the west side of Top O’Hill Road, approximately 1,100 feet north of its intersection with Christie Hill Road.

Zone: R-1 Zone

Date of Public Hearing: December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: APPROVED WITH
CONDITIONS

Scheduled Date of Publication of Action:

January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the basis that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is for an “after the fact” application to complete filling and regrading, retaining wall construction, and installation of a pool with associated pool terrace, and perform related site development activities. The overall project anticipates a total of 260 cubic yards of fill, with most, if not all of that already having been brought on-site. Some of the completion work will correct potential drainage problems that might impact the neighboring properties.
2. The Darien Environmental Protection Commission approved this application as part of EPC #32-2008 on October 1, 2008. That approval is hereby incorporated by reference. The applicant specifically noted during the public hearing that the size, shape, and location of the

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 42

wetlands on the subject property are different, and more extensive, than shown on the Town's Inland Wetlands and Watercourses Map.

3. The originally submitted plans were modified with a revision date of 12-1-2008 to reflect: 1) realignment of the drainage swale to discharge at wetlands flag #19; and 2) relocation of the detention discharge pipe from the northern to the western side of the retaining wall corner. The applicant has also replaced the existing leak off in the corner of the driveway (near the Webb property to the north) with a new drain to better direct driveway runoff to the swale.
4. The Commission notes the need for the applicants to file a Notice of Drainage Maintenance Plan regarding maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential impacts to adjacent properties.
5. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
6. As revised, the proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #216 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling and regrading work shall be in accordance with the following plans submitted to and reviewed by the Commission:
 - Plan Prepared for McCue Residence Site Drainage Plan 17 Top O'Hill Road, by McChord Engineering Associates, Inc., dated Jun 4, 2008 and last revised 12-1-08, Drawing No. SE1.
 - McCue Wetland Application Plan, 17 Top O'Hill, dated 5-21-08 and last revised 8-8-08 and 9-17-08, by Stecks.com.
- B. When work on the regrading project resumes, early in the process, the correction of the drainage problems that could impact the neighboring properties to the north or south shall be implemented. In this way, the corrective measures will take place sooner rather than later, and the neighbors concerns will be addressed so that potential impacts and damages are avoided. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- C. During the regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plan referred to in the "Site Drainage Plan" (in Condition A, above), and any additional measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 43

as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.

- D. Upon completion of the work, the applicant shall provide written verification and photographs documenting the completion of the project and compliance with the approved plans. This shall include written certification for the project's professional engineer that the drainage facilities have been installed according to the approved plans.
- E. Prior to the completion of work and before April 15, 2009, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. The actual plan shall be filed in the Planning & Zoning Department and/or in the Land Records. The drainage maintenance plan shall require the property owner and all subsequent property owners of 17 Top O'Hill Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well.
- F. The applicant shall install the drainage system as shown on the submitted "Site Drainage Plan" (in Condition A, above). The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- I. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (January 5, 2010). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the continuation of any filling or regrading work, or this approval shall become null and void.

Chairman Conze read the following agenda item:

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 44

Land Filling & Regrading Application #218, Allison Gasvoda, 40 Maywood Road. Proposing to install one rear and one side retaining wall to create a more level yard area and perform related site development activities. *PUBLIC HEARING CLOSED: 12/2/2008. DECISION DEADLINE: 2/5/2009.*

Commission members discussed the need to modify the notice in the Land Records regarding the drainage system and the maintenance of the drainage system. All members agreed.

The following motion was made: That the Commission adopt the following revised Resolution to approve the project. The motion was made by Mrs. Grimes, seconded by Mr. Spain and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009**

Application Number: Land Filling & Regrading Application #218

Street Address: 40 Maywood Road
Assessor's Map #12 Lot #6

Name and Address of Property Owner (current address)	Alison Gasvoda 21 Birch Road Darien, CT 06820
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Name and Address of Applicant & Applicant's Representative:	Chris Elkow Elise Landscapes & Nursery, LLC 530 Old Stamford Road New Canaan, CT 06840
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Activity Being Applied For: Proposing to install one rear and one side retaining wall to create a more level yard area and perform related site development activities.

Property Location: The subject property is on the east side of Maywood Road, approximately 20 feet northeast of its intersection with Dellwood Road.

Zone: R-1 Zone

Date of Public Hearing: December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices
Dates: November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: APPROVED WITH

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 45

CONDITIONS

Scheduled Date of Publication of Action:
January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the basis that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to install one rear and one side retaining wall to create a more level yard area and perform related site development activities.
2. The Darien Environmental Protection Commission (EPC) as part of EPC #58-2008 approved a fence within a regulated area, which is also part of this application. Their approval is hereby incorporated by reference.
3. The Commission notes the need for the applicants to file a document regarding maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
4. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
5. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #218 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling and regrading work shall be in accordance with the following plans submitted to and reviewed by the Commission:

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 46

- Landscape Plan Gasvoda Residence, 40 Maywood Road, Dated August 19, 2008 and last revised October 10, 2008, Page 1 of 2.
- Development Plan Kevin Gasvoda Allison Gasvoda 40 Maywood Road, last revised 10-16-08, Sheet 1 of 2.
- Notes & Details, Kevin Gasvoda Allison Gasvoda 40 Maywood Road, last revised 9-25-07, Sheet 2 of 2.

During the implementation of the regrading, the surface drainage from the south and east sides of the house and yard shall be directed to the wetlands to the east, rather than being directed toward the street to the south. This will require a slight regrading of the area to the east of the retaining wall proposed along Dellwood Road.

- B. Part of the submitted plan involves the installation of the proposed underground storm water retention system and the connection of overflow pipes from the storage system to the catch basin in Dellwood Road. This connection is required by the Commission, and is subject to the applicant obtaining the proper permit from the Darien Department of Public Works. A copy of the permit from DPW is to be submitted to the Planning and Zoning Commission by the applicant by March 6, 2009.
- C. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- D. Upon completion of the work, the applicant shall provide written verification and photographs documenting the completion of the project and compliance with the approved plans. This shall include written certification for the project's professional engineer that the drainage facilities have been installed according to the approved plans.
- E. During the regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plan in Condition A, above, and any additional measures as may be necessary due to site conditions, including tree protection and having silt fence ring the property (as proposed by the applicant). Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- F. The applicant shall install the drainage system as shown on the submitted "Development Plan" (in Condition A, above). The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- G. Prior to the issuance of a Certificate of Occupancy for the dwelling currently under construction, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 47

approval by the two Directors, it shall be filed in the Planning & Zoning Department and/or the Darien Land Records. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 40 Maywood Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days and prior to the start of any filling or regrading work.

- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to approval from the Public Works Department for a street opening permit for the new curb cut on Maywood Road, and for a connection of the proposed storm water detention system overflow into an existing catch basin on Dellwood Road.
- J. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (January 6, 2010). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the start of any filling or regrading work, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Amendment of Coastal Site Plan Review #156-A, Flood Damage Prevention Application #268, Cornelia Thornburgh, 12 Shennamere Road. Proposing to maintain the boathouse, replace stonework around the pool, install access stairs and perform related site activities within a regulated area. The subject property is located on the east side of Shennamere Road approximately 400 feet south of its intersection with Contentment Island Road, and is shown on Assessor's Map #68 as Lot #5, R-1 Zone. *PUBLIC HEARING CLOSED: 12/2/2008. DECISION DEADLINE: 2/5/2009.*

The Commission members discussed the Draft Resolution, and the following motion was made: That the Commission adopt the following Resolution to approve the project. The motion was made by Mr. Finke, seconded by Mr. Hutchison and unanimously approved.

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 48

Application Number: Amendment of Coastal Site Plan Review #156-A
Flood Damage Prevention Application #268

Street Address: 12 Shennamere Road
Assessor's Map #68 Lot #5

Name and Address of Property Owner: Richard & Cornelia Thornburgh
12 Shennamere Road
Darien, CT 06820

Name and Address of Applicant: Tim Mulligan
and Applicant's Representative: Norwalk Marine Contractors
111 Harbor Avenue
Norwalk, CT 06853

Activity Being Applied For: Proposing to maintain the boathouse, replace stonework around the pool, install access stairs and perform related site activities within a regulated area.

Property Location: Subject property is located on the east side of Shennamere Road, approximately 450 feet south of its intersection with Contentment Island Road.

Zone: R-1

Date of Public Hearing: December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:

January 15, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 810 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 49

- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to maintain the boathouse, replace stonework around the pool, install access stairs and perform related site activities within a regulated area. As described by the applicant's representative at the public hearing, this application proposes an extensive repair to the existing boathouse, and the boathouse roof will become a deck. They propose to shorten the existing ramp.
2. The State of Connecticut DEP Office of Long Island Sound Programs sent an e-mail regarding this application dated November 10, 2008. In that e-mail, they note that prior to commencing any work proposed at or waterward of the High Tide Line, the applicant must first received authorization from DEP.
3. The potential adverse impacts of the proposed activity upon coastal resources, as designed and as modified within this resolution, are minimal and are therefore acceptable.
4. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
5. The proposed activity, as modified within this resolution, is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.

NOW THEREFORE BE IT RESOLVED that Amendment of Coastal Site Plan Review #156-A and Flood Damage Prevention Application #268 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and related activity shall be in accordance with the following plans:
 - Proposed Boatramp Plan View, by Norwalk Marine Contractors, dated 10/17/08, Sheet 4 of 7.
 - Proposed Interior Boathouse Plan View and Proposed Exterior Boathouse Side View, by Norwalk Marine Contractors, dated 10/17/08, Sheet 5 of 7.
 - Proposed Boathouse Roof, Pool, and Access Stair Plan View by Norwalk Marine Contractors, dated 10/17/08, Sheet 6 of 7.
 - Proposed Access Stairs and Front Of Boathouse, by Norwalk Marine Contractors, dated 10/17/08, Sheet 7 of 7.
- B. During construction, the applicant shall utilize sediment and erosion controls as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 50

will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

- C. A final “as-built” survey is hereby required to certify that the site improvements adjacent to the coastal resources and/or within the flood hazard area are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the work has been properly completed in accordance with the approved plans
- D. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- E. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This would include, but not be limited to, approval of the Darien Health Department prior to the issuance of a Zoning Permit and Building Permit.
- F. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (January 5, 2010). This may be extended as per Sections 815 and 829f.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman.

Chairman Conze read the following agenda item:

Amendment of Special Permit Application #253, Jordan Caterers, 1480 Boston Post Road.

Request to modify Condition G in the Resolution regarding overnight parking. Request is to allow one “van-type” vehicle to be allowed to be parked overnight behind the building.

The Commission members discussed the request to park one delivery van on a rear portion of the property. The Commission members noted that a small vehicle at the site would not be a problem, but the storage of one or more large vehicles would create an issue or problem. The Commission members agreed to modify the Approved Resolution to allow the parking of one small delivery van at the rear of the site. The motion was made by Mr. Hutchison, seconded by Mrs. Grimes. All voted in favor except for Mr. Finke who abstained. The motion passed by a vote of 4-0-1.

Chairman Conze read the following agenda item:

Special Permit Application #125-B, Darien Youth Commission, 2 Renshaw Road.

Request to use Town Hall for summer camp.

Mr. Ginsberg explained that the previous approval from the Planning and Zoning Commission was for five or six years, and that the Town has experienced no problems or conflicts due to the summer camp being located at the Town Hall site. It is a temporary activity for a few weeks during the summer. The

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 51

Commission members believed that it would be appropriate to approve the summer camp for the next five years.

The following motion was made: That the request to approve the summer camp activity at the Town Hall site for 2009-2013 was approved. The motion was made by Mr. Hutchison, seconded by Mrs. Grimes and unanimously approved.

Chairman Conze read the following agenda item:

Special Permit #66-I, Darien YMCA, 2420 Boston Post Road.

Review of 2009 Special Events Schedule.

Mr. Ginsberg explained that the events and numbers of expected people to attend are the same, but the dates are changed in accordance with the calendar year.

The following motion was made: That the Commission approve the YMCA's Schedule of Special Events for 2009. The motion was made by Mrs. Grimes, seconded by Mr. Spain and unanimously approved.

Chairman Conze then read the following agenda item:

Amendment of Flood Damage Prevention Application #233, Myers, 20 Mayflower Road.

Request to amend plans.

Mr. Ginsberg explained that the Planning and Zoning Commission approval had required that one of the two parking spaces be located in the back yard because it could not be located in the front or side yard. Instead of constructing the parking space in the back yard out of paving blocks, the applicant constructed the parking area with "structural soil," which is a mix of gravel, stone and soil. The area was then covered with turf so that it looks and functions like a grass back yard.

Mr. Spain noted that the soil will not hold up to turning movements or any vehicular traffic as paving stones or asphalt paving. Commission members wondered whether the designated parking space in the back yard would ever be used as a parking space. It appears that it would seldom, if ever, be used. Commission members debated whether to allow this type of structural soil to qualify as one of the two required parking spaces. Eventually, the conclusion was that this was an exceptional situation and although it would not normally be permitted, the Commission would authorize the structural soil to be used in this particular case.

The following motion as made: That due to the unusual circumstances, the Planning and Zoning Commission authorizes the Amendment of Coastal Site Plan Review to allow the structural soil parking in the back yard in accordance with the submitted information and plans. The motion was made by Mr. Finke, seconded by Mrs. Grimes and unanimously approved.

Approval of Minutes

November 25, 2008 *Special Meeting*
December 2, 2008 *General Meeting/Public Hearing*
December 9, 2008 *General Meeting/Public Hearing*

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 6, 2009
PAGE 52

Due to the late hour and the inclement weather conditions, the Commission members decided to postpone action on the minutes of prior meetings until a future meeting.

The meeting was adjourned at 9:35 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning & Zoning

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